Customs Bulletin

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and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

19 CFR Part 178

(T.D. 85-53)

Notice of OMB Approval of Information Collections in Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by setting forth a list of information collections contained in the regulations and displaying the control number assigned by the Office of Management and Budget (OMB). The Paperwork Reduction Act of 1980 requires federal agencies to obtain OMB clearance for information collections that the agency imposes on the public. This listing furnishes a way for the public to determine that the paperwork burdens imposed by Customs have been approved by OMB and comply with the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Kathleen Katchmark, Paperwork Management Staff, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-7559).

EFFECTIVE DATE: March 26, 1985.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act of 1980 (Pub. L. (96-511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*) establishes policies and procedures for controlling paperwork burdens imposed on the public by federal agencies. Pursuant to this Act, by a document published in the Federal Register on March 31, 1983, (48 FR 13666) the Office of Management and Budget (OMB) promulgated rules implementing the Act. The OMB rules are codified at 5 CFR Part 1320 *et seq.*

One aspect of OMB's oversight function is the review and approval of information collections. Generally, information collections include any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. OMB analyzes such

requests for three basic requirements. First, the collection of information must be necessary for the proper performance of the agency functions. Second, the request for information or records must not duplicate information otherwise accessible to the agency. Third, the information must have practical utility.

When an information collection is approved by OMB, it is issued a control number. The control number provides a simple and effective way to inform the public that a particular information collection has been approved by OMB pursuant to the Paperwork Reduction Act.

This document amends the Customs Regulations in 19 CFR Chapter I by adding a new Part 178 which lists the information collections contained in the regulations and their respective control numbers as assigned by OMB.

Part 178 will be amended to reflect the approval of new information collections as well as the deletion of collections no longer found to be necessary.

Executive Order 12291, Regulatory Flexibility Act, Inapplicability of Public Notice Requirement

Although this document creates a new part in the Customs Regulations contained in 19 CFR Chapter I, it is merely a listing of the status of other already published regulations. Therefore, the requirements of E.O. 12291, the Regulatory Flexibility Act, and the notice and public comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 552) are not applicable to this document.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Chapter I

In General

Customs duties and inspection, Imports, Exports.

PART 178

Reporting and recordkeeping requirements, paperwork, collections of information.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), is amended by adding a new part, Part 178, titled, "Approval of Information Collection Requirements", to read as follows:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Sections.

178.1 Purpose.

178.2 Listing of OMB Control Numbers.

AUTHORITY

R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*

§ 178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
§§ 4.20, 4.23, and 4.24.	Certification of payment of tonnage tax.	1515-0113
§ 4.97	Application for foreign vessel to engage in salvage operation/report of salvage operation.	1515-0132
§ 6.14	Report of aircraft arriving in the U.S. via U.S/Mexican border.	1515-0098
§ 10.1	Declaration of foreign shipper that U.S. articles were exported and returned without having been advanced in value or improved in condition.	1515-0099
§ 10.8(e)	Declaration of person who performed repairs or alterations abroad on articles exported for that purpose.	1515-0137
§ 10.8a(b)(1)	Declaration by person abroad who received and is returning articles to the U.S. that do not conform to samples or specifications.	1515-0108

19 CFR section	Description	OMB control No.
§ 10.8a(b)(2)	Declaration by owner, importer, consignee or agent that articles being reimported into U.S. were previously imported, with payment of duty, and exported, without benefit for drawback.	1515–0108
§ 10.9(e)	Declaration by person who performed processing on articles, exported from the U.S., while the articles were abroad.	1515–0110
§§ 10.24, 162.1c	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part form fabricated components that were products of the U.S.	1515–0088
§ 10.41b	Requirement to clearly and conspicuously mark serially numbered substantial holders or containers.	1515–0116
§ 10.41b(e)	Requirement to keep adequate records on current status of serially numbered substantial holders or containers.	1515–0101
§ 10.48	Declaration by originating artist, or seller or shipper, that work of art being imported into the U.S. is an original work of art.	1515–0118
§ 10.67(a)(2)	Declaration by foreign shipper describing the specific use to which articles exported from U.S. for scientific or educational purposes, and now being returned, were put while abroad.	1515–0105
§ 10.67(a)(3)	Declaration of ultimate consignee of articles previously exported from U.S. for scientific or educational purposes, and now being returned, that such articles have not been changed in condition while abroad.	1515–0104

19 CFR section	Description	OMB control No.
§ 10.107	Report of person who sent ariticle from foreign country, or of person in U.S. for whose account an article was received, to justify duty-free entry of articles imported under conditions of emergency.	1515–0130
§ 10.137	Requirement of importer to maintain accurate, detailed records on use or other disposition of imported merchandise for "actual use" duty assessment requirements.	1515–0091
§ 10.138	Certificate of importer to verify actual use of articles imported duty-free or at a reduced rate of duty under actual use provisions.	1515–0109
§§ 10.191–10.198.	Claim for duty-free entry of eligible articles under the Caribbean Basin Initiative.	1515–0112
§ 12.130(c)	Declaration of manufacturer, producer, exporter or importer of textiles or textile products as to country of origin of such article.	1515–0140
§ 19.2	Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility.	1515–0121
§ 19.3	Application to alter, relocate, or discontinue a bonded warehouse/list of employees engaged in the carriage, receiving, storage or delivery of bonded merchandise.	1515–0134
§ 19.13(b)	Application for establishment of a manufacturing warehouse.	1515–0136
§ 19.14(c)	Application by proprietor of bonded manufacturing warehouse to receive therein domestic merchandise to be used in connection with the manufacture of articles.	1515–0133
§ 19.17	Application by manufacturer to bond (or discontinue a previously bonded) establishment engaged in the smelting or refining of metal-bearing materials.	1515–0127

19 CFR section	Description	OMB control No.
§ 19.19	Record of smelting and refining operation showing receipt and disposition of each shipment of material.	1515–0135
§ 19.40	Application for establishment of a container station.	1515–0117
§ 19.42	Application by container station operator to transfer a container, intact, to a station.	1515–0142
§ 19.46	List of persons employed by container station operator in moving, receiving, storing or delivering imported merchandise.	1515–0138
§ 103.14	Disclosure by Customs of information on cargo declarations of inward vessel manifests.	1515–0124
§§ 111.21, 111.22, and 111.23.	Requirement that licensed customs brokers must keep current record of all accounts and all financial transactions as a broker.	1515–0089
§ 111.30(d)	Triennal reporting requirement of status as active or inactive by customs brokers.	1515–0100
§ 112.29(b)	Requirement to furnish a current list of officers, members or employees, of a customs cartage or lighterage establishment, upon request.	1515–0126
§ 112.49	Request by cartman or lighterman for temporary identification card pending issuance of permanent identification.	1515–0128
§ 133.2	Application to record a trademark	1515–0114
§§ 133.12, 133.13.	Application to record a trade-name	1515–0119
§§ 133.32, 133.33.	Application to record a copyright	1515–0097
§§ 141.81–141.83, 141.86.	Requirement as to the existence and contents of special customs invoices, special summary invoices or commercial invoices.	1515–0120
§ 147.11(c)	Requirement to use a special form of entry for articles entered into U.S. for exhibition purposes under the Trade Fair Act of 1959.	1515–0106

19 CFR section	Description	OMB control No.
§ 177.2	Requirements as to form and contents of requests for administrative rulings.	1515–0102
§ 177.5	Requirement to notify Customs of a change in status of any transaction currently the subject of an administrative ruling request.	1515–0129
§ 177.11	Requirement as to form and contents of requests for advice from Customs field officers or others.	1515–0103
§§ 191.0–191.166.	Recordkeeping and reporting requirements relating to drawbacks.	1515–0094
§ 191.53	Requirement as to form and contents of exporter's chronological summary of exports used in support of drawback claims.	1515–0090

Dated: March 21, 1985.

George C. Corcoran, Jr.,
Acting Commissioner of Customs.

[Published in the Federal Register, March 26, 1985 (50 FR 11849)]

(T.D. 85–54)

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is given pursuant to the provisions of section 151.43, Customs Regulations (19 CFR 151.43), that the application of Herguth Petroleum Laboratories, Incorporated, 101 Corporate Place, Vallejo, California 94590, to gauge imported petroleum and petroleum products in all Customs Districts, in accordance with the provisions of Section 151.43, Customs Regulations, is approved.

Dated: March 26, 1985.

ROGER J. CRAIN,
Chief,
Technical Section, Technical Services Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 6

Proposed Customs Regulations Amendments Relating to Overflight Exemptions and Reporting Requirements for Aircraft Arriving in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by expanding the coverage of the notice of penetration of U.S. airspace requirements to include more aircraft within those requirements, and by placing additional requirements upon those who might seek an exemption from landing requirements for aircraft arriving from south of the U.S.

Current regulations provide specifics regarding the requirements for reporting arrival, and include a list of designated airports at various border and coastline points at which designated aircraft must land. This notice merely proposes to expand coverage of existing requirements to: include all aircraft arriving from Puerto Rico and the U.S. Virgin Islands within the notice of penetration requirements; include within the notice requirements aircraft departing and then reentering U.S. airspace, regardless of whether the aircraft commander reports having landed outside of the U.S.; increase from 15 minutes to 1 hour the time required for notice to be given prior to penetrating U.S. airspace; and require aircraft seeking exemptions from certain landing requirements to be equipped with functioning transponders and to provide additional justification for being granted an exemption.

The proposed amendments are necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand the effectiveness of drug smuggling enforcement. Customs has found that because aircraft arriving in U.S. airspace from certain areas south of the mainland U.S. are exempt from current reporting requirements, and because overflight exemption requirements are too lax, certain potentially high-risk flights are able to bypass the best drug inter-

diction efforts of Customs. This proposal seeks to remedy that situation.

DATES: Comments must be received before May 31, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Commissioner of Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5607).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the U.S. market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users, and the major increases in volumes of illegal drug importations in the U.S. are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organization has solidified a dominant position in the U.S. through the penetration of strategic points in the economy. Areas to the south of the U.S. are major sources of illegal drugs destined for the U.S. Smuggling by air is the preferred mode of transportation for high-cost narcotics, with cocaine and marijuana smuggling representing particularly high risk areas. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights, annually. Although recent air interdiction activities in the southeastern U.S. have resulted in many arrests and seizures, an end to the present situation of drug abuse in the U.S. is not in sight.

In order to address this national problem, it is necessary to take action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new section 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the U.S. via the U.S./Mexican border.

Because of the magnitude of the drug problem, and in direct response to Executive and Congressional directives, by an interim regulation published as T.D. 82–52 in the Federal Register on

March 24, 1982 (47 FR 12620), the notice requirements were extended to private aircraft arriving in the U.S. via the Gulf of Mexico, Pacific and Atlantic Coasts. These interim regulations were adopted as a final rule by publication of T.D. 83–192 in the Federal Register on September 15, 1983 (48 FR 41381).

By publication in the Federal Register on November 9, 1984 (49 FR 46885), § 6.14 was further amended to extend the reporting requirements to certain commercial aircraft arriving from areas south of the U.S. By expanding the definition of private aircraft to include certain commercial flights, Customs sought to increase enforcement coverage to further stem the flow of illicit narcotics. In spite of previous efforts, we have found that there remain certain gaps in the reporting requirements provided in Part 6 of the Customs Regulations. The proposed amendments discussed above and set forth below will fill those gaps.

AUTHORITY

This proposal is made under the authority of R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. Appendix 1509).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

This proposal is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not hve a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The document is subject to the Paperwork Reduction Act. Accordingly, the reporting requirements contained in the document have been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Customs Service and to the Office of Management and Budget at the addresses set forth in the ADDRESS portion of this document.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LISTS OF SUBJECTS IN 19 CFR PART 6

Air carriers, Air transportation, Aircraft, Airports.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: March 14, 1985.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, April 1, 1985 (50 FR 12819)]

PART 6—AIR COMMERCE REGULATIONS

1. It is proposed to amend § 6.1 by adding a new paragraph (i), to read as follows:

§ 6.1 Scope and definitions.

* * * * * * *

(i) The term "place" as used in this Part means anywhere outside of the airspace of the United States.

2. It is proposed to amend the second sentence of § 6.14(a) by removing the words "15 minutes", and inserting, in their place, the words "1 hour".

3. It is proposed to amend § 6.14(b) to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

* * * * * * *

(b) *Advance report of penetration of United States airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 6.1(b)) from Puerto Rico, shall furnish a notice of intended arrival to the Customs Service at the nearest designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 1 hour before crossing the United States coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

4. It is proposed to amend § 6.14(f)(1)(iii) by revising the paragraph to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

(f) * * *

(1) * * *

(iii) A statement that the aircraft is equipped with a functioning transponder which will be in use during overflight;

5. It is proposed to amend § 6.14(f)(1)(xi) by revising the paragraph to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

(f) * * *

(1) * * *

(xi) Detailed reasons for overflight exemption, stated in terms of savings in cost and time, safety considerations, and convenience.

6. It is proposed to amend § 6.25(c)(1) by removing the words "which are not inspected by Customs officers in the Virgin Islands".

7. It is proposed to amend § 6.25(c)(2) by removing the words "which were not inspected by Customs officers in the Virgin Islands".

8. It is proposed to amend § 6.25(c) by removing subparagraph (3) from the section, and by redesignating subparagraphs (4) and (5) as subparagraphs (3) and (4), respectively.

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 84-1532)

CARLING ELECTRIC CO. (CARLINGSWITCH, INC.), APPELLANT *v.* UNITED STATES, APPELLEE

(Decided March 21, 1985)

Charles P. Deem, Shaw & Stedina, of New York, N.Y., argued for appellant.

Veronica A. Perry, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for appellee. With her on the brief were *Richard K. Willard*, Acting Assistant Attorney General, *David M. Cohen*, Director, and *Joseph L. Liebman*, Attorney in Charge, International Trade Field Office.

Appealed from: U.S. Court of International Trade.

Judge LANDIS.

Before MARKEY, *Chief Judge*, BENNETT and SMITH, *Circuit Judges*.

MARKEY, *Chief Judge*.

Appeal from a decision of the United States Court of International Trade (CIT) sustaining Customs' classification and dismissing Carling Electric Company's (Carling's) complaint. *Carling Electric Co. (Carlingswitch, Inc.)* v. *United States*, No. 84-60 (Ct. Int'l Trade May 31, 1984). We affirm.

BACKGROUND

Two articles of merchandise were imported from Mexico and entered at the Port of Brownsville, Texas in 1976. The first was a small light bulb in a socket with two wire conductors extending from the socket (light).[1] The second was a small housing containing a switch and a light that glowed when the switch actuator was moved to the "on" position (lighted switch).[2] Customs classified the former as electrical articles or electrical parts of articles under Item 688.40 of the Tariff Schedules of the United States (TSUS), duitable at the rate of 5.5% ad valorem, and the latter as electrical switches under TSUS item 685.90, dutiable at the rate of 8.5% ad valorem.

[1] Carling's brief labels this article an "indicator light".

[2] Carling's brief labels this article "combination indicator light and switch".

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Carling claimed that the light is properly classifiable as visual signalling apparatus or parts thereof pursuant to TSUS item 685.70, duitable at the rate of 4% ad valorem, and that the lighted switch should be classified under TSUS item 688.40, dutiable at the rate of 5.5 ad valorem.

The pertinent statutes are:

Light:		
Classified:		
688.40	Electrical articles, and electrical parts of articles, not specially provided for ...	5.5% ad val.
Claimed:		
685.70	Bells, sirens, indicator panels, burglar and fire alarms, and other sound or visual signalling apparatus, all the foregoing which are electrical, and parts thereof	4% ad val.
Lighted Switch:		
Classified:		
685.90	Electrical switches, relays, fuses, lightning arrestors, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes, and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof.....	8.5% ad val.
Claimed:		
688.40	Electrical articles, and electrical parts of articles not specially provided for	5.5% ad val.

The CIT found that Customs properly classified the light, and that Carling failed to overcome the presumption of correctness due Customs' classification and to prove that its claimed classification was correct, because the light does not operate only in temporary or emergency conditions. The CIT also found that Customs properly classified the lighted switch, and that Carling failed to prove either that Customs' classification was wrong or that its claimed classification was correct, specifically that Carling had not proved that the light component is co-equal with the switch component in the lighted switch and thus failed to prove that that imported article was "more than" an electrical switch.

ISSUES

1. Whether the CIT erred in sustaining Customs' classification of the light.
2. Whether the CIT erred in sustaining Customs' classification of the lighted switch.

OPINION

(1) *Light*

Carling argues that its light may be used with a wide variety of products, and when so used, its illumination informs an observer of some fact. On that premise, it argues that the light is a visual signalling apparatus or part thereof and classifiable under item 685.70. Carling's difficulty is twofold: (1) goods are classified in the condition in which imported, and the light itself, the best witness, establishes that, as imported, it is just that, a light; and (2) item 685.70 is not a chief-use provision.

The parties have devoted substantial discussion to an indication in *Amersham Corp.* v. *United States*, 564 F. Supp. 813, 825 (Ct. Int'l Trade 1983), *aff'd*, 728 F.2d 1453 (Fed. Cir. 1984), that item 685.70 requires that an article function in temporary or abnormal situations, and to the testimony of Carling's expert, Mr. Frederick Kundahl, that the imported light was designed to be operated continuously. In view of the nature of the imported merchandise in this case, we need not and therefore do not resolve the conflicting arguments rising from that discussion.[3]

The record, and Carling's own argument, establish that no signal of any kind can possibly occur until the light is installed in something else. The light, in its imported condition has no function or practical application in and of itself (except as an electrical article). It is at most capable of use as part of other electrical articles, such as microphones, roasters, coffee makers, or freezers, none of which is itself a signalling apparatus. Carling's argument that the light conveys "information" depends entirely on incorportation of the light in something else. As imported, the light is, when connected in an electrical circuit, capable of conveying only the information that it is or is not glowing, the same information conveyed by every light bulb. The light is not in itself a "visually signalling apparatus", nor is it any of the other articles set forth *eo nomine* in TSUS item 685.70

The CIT correctly held that the imported light is not visual signalling apparatus or parts thereof, and that it was properly classi-

[3] Carling argues that item 685.70 has been inconsistently defined in certain trial court opinions accompanying judgments that were not appealed from. *Oxford Int'l Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973); *Oxford Int'l Corp.* v. *United States*, 75 Cust. Ct. 58, C.D. 4608 (1975); *A&A Int'l Inc.* v. *United States*, No. 83-42 (Ct. Int'l Trade May 10, 1983). Because those cases are not precedent in this court, we need not, and therefore do not, respond to the argument.

fied under TSUS item 688.40, as electrical parts of articles. Carling has not shown that classification to have been wrong.

(2) *Lighted Switch*

Carling claims that the imported switches are "more than" switches because they have an illumination feature, but makes no effort to show that "electrical switches" or the scope of TSUS item 685.90 is too narrow to include the imported article. *Cf. E. Green & Son (New York), Inc.* v. *United States,* 450 F.2d 1396 (CCPA 1971).

An *eo nomine* provision, such as that for switches, includes all forms of the article, *Knowles Electronics* v. *United States,* 504 F.2d 1403, 1405 (CCPA 1974) (miniature electrical devices for assembly into hearing aids were forms of "microphones" in item 684.70). Based on the common meaning of "switch", the imported article is clearly a form of switch.

Mr. Richard Sorenson (Sorenson), president of Carling, testified that a switch is defined "as a device which performs the function of opening or closing a circuit." Sorenson also testified that a switch indicates whether it is on or off "because a switch itself is, by virtue of the actuator being in a different position, between on and off, indicates whether it is on or off."

The light included in the switch housing is integrally wired and is dependent on operation on the switch. The switch is not dependent on operation of the light. The function of the light (when illuminated) is to inform the user that the switch is in a particular position, normally "on". The CIT held, and Carling has not shown to the contrary, that the light merely enhances a function already performed by the switch. Slip Op. at 14.

Whether two functions are co-equal, or primary and secondary, is a question of fact. Because the light is dependent on operation of the switch, its function is incidental, subordinate, and secondary to the primary function of the switch. The CIT correctly determined that "the switching function is the key element in the lighted switches device," Slip Op. at 14, and correctly applied the principle that "where an article has both a primary and an incidental function subordinate to the primary function, the primary function governs classification." Slip Op. at 12. *See also Trans-Atlantic Co.* v. *United States,* 471 F. 2d 1397, 1399 (CCPA 1973).

Carling's reliance on *The Ashflash Corp.* v. *United States,* 412 F. Supp. 585, CD 4643 (Cust. Ct. 1976) and *Fedtro, Inc.* v. *United States,* 449 F.2d 1395 (CCPA 1971), is misplaced. In *Ashflash,* which is not precedent in this court, the merchandise was a combination having a searchlight component and signal-warning flasher component—the components having totally independent functions and being operated separately from one another. The Customs Court there noted, "the signal warning function did not assist, improve or augment the searchlight function." 412 F. Supp. at 587. Here the light merely augments the switch's function, making it easier

under some conditions to tell the position of the switch. *Fedtro* also involved a combination article having two separate, independent functions: a 4-way flasher switch made all signal lights of a car flash, and a light wired independently to the brake light switch indicated when the brakes were engaged. Here the switch and light are wired integrally and operation of the light is totally dependent on operation of the switch.

The CIT correctly held that the lighted switch is not "more than" a switch and that it was properly classified under TSUS item 685.90, as electrical switches. Carling has not shown that classification to have been wrong.

AFFIRMED

United States Court of International Trade

One Federal Plaza

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Decisions of the United States Court of International Trade

(Slip Op. 85-32)

UNITED STATES, PLAINTIFF *v.* FEDERAL INSURANCE CO. AND COMETALS, INC., DEFENDANTS

Court No. 82-05-00594

Before WATSON, *Judge.*

ACTION FOR CUSTOMS DUTIES—EQUITABLE ESTOPPEL

In an action by the government to collect customs duties from the importer and its surety the Court holds that the government is equitably estopped from making its claim because of its affirmative misconduct.

(Decided March 14, 1985)

Richard K. Willard, Acting Assistant Attorney General (*Joseph I. Liebman,* Attorney in Charge, International Trade Field Office and *Barbara M. Epstein,* Department of Justice, Civil Division Commercial Litigation Branch) for the plaintiff.

Serko & Simon (*David Serko, Margaret H. Sachter,* and *George S. Locker,* attorneys) for the defendants.

WATSON, *Judge:* The plaintiff brought this action against the importer, (Cometals, Inc.), and the importer's surety, Federal Insurance Company, in order to recover approximately $230,344.12 in import duties, plus interest. It is before the court on the plaintiff's motion for summary judgment, defendants' opposition thereto and their cross motion for summary judgment on their counterclaims for equitable recoupment.[1] There is no dispute as to the facts.

Underlying this action is the plaintiff's failure to obtain payment of import duties, despite Cometal's transmittal of the money owed, to its broker, James Loudon & Co. (Loudon).

In this decision, the Court finds that the plaintiff-government disregarded its own regulations, interpreted a decisive regulation unlawfully, and disregarded the manifest intention of Congress.

[1] In an earlier decision the Court dismissed counterclaims made by defendants under the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.), the Tucker Act (28 U.S.C. §1491), and the Administrative Procedure Act, 5 U.S.C. § 701 et seq., *United States* v. *Federal Ins. Co. and Cometals Inc.*, 6 C.I.T. ———, (Slip Op. 83-118, November 15, 1983).

Thus, sole responsibility for not recieving the duties that are claimed to be owed by the defendants, must be attributed to the plaintiff's malfeasance. In short, the government is equitably estopped from recovering on its claim.

This action has it origin in the importation by Cometals of titanium sponge. As a result of the entry involved Cometals owed approximately $230,344.12 in import duties. Loudon, after receiving the necessary funds from Cometals on or about May 2, 1980, tendered its own *uncertified* check in the amount of $230.344.12 on May 12, 1980, as payment to the Customs Service for the duties owed by defendant-importer.

On May 29, 1980, however, this check was returned to Customs by the Bank of America because of insufficient funds in Loudon's account. Customs then requested and subsequently received a second check from Loudon on June 12, 1980. This check was also returned by the bank because of insufficient funds. Finally, after the Customs Service's direct demands for payment from Loudon proved futile, it turned to the defendants for payment.

It should also be noted that the government had audited Loudon in October of 1977, and that audit had revealed a severe net worth deficiency. The September, 1977, financial statement, which the government admits it obtained as a result of this audit, showed that Loudon's liabilities exceeded its assests by over $164,000 and that it was responsible for more than $190,000 in overdrafts. Despite this fact, no further audits were conducted by the Customs Service.

Moreover, in late 1979, and early 1980, six of Loudon's uncertified checks covering Cometal's entries were returned to the government because of insufficient funds.[2] Nevertheless, the government continued to re-deposit those checks or to accept new checks from London.

I

Regulations promulgated by the Customs Service provide a detailed procedure for the payment of duties. *See generally,* 19 C.F.R. § 24. The tender and acceptance of uncertified checks is governed by 19 C.F.R. § 24.1(3) which reads as follows:

> 19 C.F.R. § 24.1(3)
>
> (3) *An uncertified check drawn by an interested party* on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depository *shall be accepted if there is on file* with the district director *an entry bond or other bond* to secure the pay-

[2] For example, Check No. 43896 dated March 7, 1980, was not paid until April 21, 1980; Check No. 44314 dated April 15, 1980, was not paid until May 5, 1980.

ment of the duties, taxes, or other charges, *or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the district director to make payment in such manner.* In determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished, banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. [emphasis supplied]

The government argues that when it accepted the uncertified checks in question from Loudon it was acting in compliance with 19 C.F.R. § 24.1(3). According to the government, as long as there was a bond on file, *even if it was a bond posted by the importer,* it was acting in accordance with the law.

The Court finds that the government's interpretation of 19 C.F.R. § 24.1(3) violates three sections of the law which are in *pari materia;* 19 U.S.C. § 66, 19 U.S.C. § 1641(d) and 19 U.S.C. § 1648.

19 U.S.C. § 66 requires that all regulations prescribed by the Secretary of the Treasury relating to the collection of duties from importation must *not* be inconsistent with the law.

§ 66. Rules and forms prescribed by Secretary.

The Secretary of the Treasury shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations *not inconsistent with law,* to be used in carrying out the provisions of law relating to raising revenue from imports, or to warehousing, and shall give such directions to customs officers and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law. [emphasis supplied]

19 U.S.C. § 1641 deals with the regulations of brokers. When enacting 19 U.S.C. § 1641(d) Congress expressly stated that the Secretary of the Treasury *shall* promulgate rules and regulations regarding Customs brokers to protect *both importers and the revenue of the United States.* 19 U.S.C. § 1641(d) reads as follows:

19 U.S.C. § 1641 Customhouse brokers.

(d) Regulations by Secretary. The Secretary of the Treasury *shall* prescribe such rules and regulations *as he may deem necessary to protect importers and the revenue of the United States,* and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by customhouse brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States. [emphasis supplied]

This Court deems the word "shall" contained within 19 U.S.C. § 1641(d) to be imperative in nature. Although Congress gave the Secretary certain discretion in how he promulgates regulations concerning the relationship between brokers, importers and the revenue of the United States, this Court finds that the Secretary *must,* when promulgating such regulations, adhere to Congress' directive that these regulations protect *both* the importers and the revenue of the United States.

If there remained any doubt as to why Congress used the word "shall" in 19 U.S.C. § 1641(d), the legislative history of the 1935 amendment to 19 U.S.C. § 1641(d) that added the language "to protect importers," make it clear that Congress intended that the word "shall" be given its common imperative meaning. The overwhelming impact of this legislative history justifies the following extended quotation:

> While the large importers are more or less familiar with customs procedure the great majority of importers are solely dependent upon the honesty and the competency of their customs brokers to protect their interests. Even in the case of large importers, however, due to the specialized nature of customs procedure, great reliance must be placed upon their brokers for proper entry of merchandise.
>
> In view of the fact that these customhouse brokers are quasi officers of the Treasury and that by licensing them the Treasury holds out to importers that it has investigated their character and represents to such importers that they are capable and honest in their conduct of their customs business, and in view of the large opportunities for profitable fraud open to dishonest person who, from the very nature of things, occasionally succeed in obtaining licenses as customhouse brokers despite the strictest possible investigation by the Treasury of their character and qualifications, it is essential that the Department have wide discretion in dealing with these brokers and that the Secretary of the Treasury, therefore, be given broad powers to supervise and regulate their activities. Under existing law his powers in these respects are very limited, and it is the purpose of the present amendments to broaden the Secretary's powers so that he can in the future more effectively cope with frauds practiced by customhouse brokers on both importers and the revenues of the United States.
>
> Although the great majority of these brokers are entirely above reproach in the conduct of their business, the corrupt practices of a few, unhampered by adequate statutory provisions for supervision, have proved a grave menace to importers and customs revenue alike. The present amendments are designed to remedy this situation. They will give to the Secretary of the Treasury the power to regulate the conduct of the business of customhouse brokers in such a manner that *the opportunity for fraudulent practices will be reduced to an absolute minimum.* [emphasis supplied]

S. Rep. No. 1170, 74th Cong., 1st Sess., 3 (1935).

It is thus clear that Congress was extremely concerned with the victimization of importers by brokers and required that the Secretary prescribe regulations protecting both importers and the revenue of the United States from possible frauds by brokers.

19 U.S.C. § 1648[3] granted the Customs Service broad authority to promulgate regulations regarding the payment of Customs duties with uncertified checks. *See* 19 C.F.R. § 24.1(3). However, when the Customs Service agrees to accept an uncertified check from a broker pursuant to any regulation it promulgates under 19 U.S.C. § 1648, such regulation and the Customs Service's interpretation of this regulation, must conform to clear Congressional intent contained within 19 U.S.C. § 1641(d).[4]

The regulation contained in 19 C.F.R. § 24.1(3) cannot operate to the detriment of importers entrusting their funds to brokers, without violating 19 U.S.C. § 1641(d). A regulation such as this one that authorizes the government to accept an uncertified check from a broker cannot be exclusively used for the protection of the revenue of the United States at the unwitting expense of the importer, without failing to fully effectuate 19 U.S.C. § 1641(d) and its clear legislative purpose. It would be palpably absurd to have the importer guarantee the conduct of its broker when the clear intent of 19 U.S.C. § 1641(d) was to protect *both* the revenue of the United States and the *importer* from possible misconduct by brokers.

It is inconceivable that the sum at issue would not be safely within the hands of the government, had it complied with its own regulation. The regulation in question, 19 C.F.R. § 24.1(3), must be interpreted so that it comports with the law, in which case, the bond posted *must* be the bond of the party making payment. Any interpretation of this regulation which would allow the bond of the importer to protect the legal obligation of the broker is unlawful.

This Court also takes note of another regulation promulgated pursuant to 19 U.S.C. § 1641 which also must protect *both* the importer and the revenue of the United States.

19 C.F.R. § 111.27 states:

> The Regional Director * * * *shall* make such audit or inspection of the books and papers to be required to be kept and maintained by a broker as may be necessary * * * *to determine* whether or not the broker is complying with the requirements of this part. Furthermore the Regional Director * * * may inspect such books and papers to obtain information regarding specific Customs transactions for the purpose of *protecting im-*

[3] §1648. Uncertified checks, United States notes, and national bank notes receivable for customs duties.
Customs officers may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; *but if a check so received is not paid the person by whom such check has been tendered shall remain liable* for the payment of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered. [emphasis supplied]

[4] The statute also expressly states that "[i]f a check so received is not paid *the person by whom such check has been tendered* shall remain liable for the payment of the duties. * * *" *See* 19 U.S.C. § 1648. [emphasis supplied]

porters or the revenue of the United States [emphasis supplied].

The Regional Director must conduct audits in a manner designed to protect both importers and the revenue of the United States. This Court cannot permit the plaintiff to benefit from its own violation of the law nor can it condone the Custom Service's failure to conform to its own regulations. By continuing to redeposit Loudon's "bouncing checks" in early 1980, the government was directly responsible for endangering the payment of duties by Cometals. At the same time, the government was not enforcing a law intended to protect *both* importers and the revenue of the United States.

The government's failure to act in accordance with 19 C.F.R. § 24.1(3) and its violation of the manifest intention of Congress would be sufficient by itself to estop it from obtaining the duties in question. Moreover, by the loose enforcement of 19 C.F.R. § 111.27 and by failing to follow up its September, 1977, audit of Loudon, the government was increasing its risk and the risk of importers who were entrusting their funds to the broker. This Court holds that under the facts presented the government has committed affirmative misconduct and further holds that it is equitably estopped from recovering the import duties in question.

II

Equitable estoppel adjusts the relative rights of parties based upon a consideration of justice and good conscience. *United States* v. *Georgia-Pacific Company,* 421 F.2d 92, 95 (9th Cir. 1970) (and cases cited therein). It has been stated that equitable estoppel precludes a party both at law and equity "[f]rom asserting rights which might perhaps have otherwise existed either of property, of contract, or of remedy as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract or of remedy." 3 Pomeroy, Equity Jurisprudence § 804 at 189 (5th ed. Symons 1941).

Generally, in suits not involving the government, four elements must be present in order to establish the defense of estoppel: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts and (4) he must rely on the former's conduct to his injury, *United States* v. *Ruby Co.,* 588 F.2d 697, 703 (9th Cir. 1978).

The traditional elements of estoppel are clearly present in the instant action. The government knew about Loudon's precarious financial condition and improperly relied upon Cometal's bond when it accepted Loudon's uncertified checks. The defendants were not aware of Loudon's precarious financial condition, nor did they know that the government was relying on them as guarantors of

Loudon's "bouncing" checks. The government's mechanism for collecting duties is in its nature intended to encourage reliance on its regularity and propriety by those owing duties. As a result of reliance on the propriety of the government's conduct, Cometals lost $230,344.12. The failure to adhere to its own regulations and to act in accordance with the law provides the crucial element of affirmative misconduct that is necessary to estop the government.

The Court in *Corniel Rodriguez* v. *I.N.S.*, 532 F.2d 301 (2nd Cir. 1976) held that: "[n]on compliance with an affirmatively required procedure, obviously designed to protect individuals * * * (is) an act of *affirmative misconduct.* * * * Indeed since 22 C.F.R. § 42.122(d) was validly adopted * * * it carries the force of law (and) must be respected and enforced by the Government." *Corniel Rodriguez* v. *I.N.S.*, 532 F.2d, at 306, 307 (1976) (and cases cited therein) [emphasis supplied].

The presence of an additional element of affirmative misconduct must be established in order for the government to be subject to equitable estoppel. This additional element is necessary because the government cannot be estopped under the same terms as a private litigant:

> [W]hen the government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interests of the citizenry as whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the government may not be estopped on the same terms as any other litigant. *Heckler* v. *Community Health Services of Crawford,* ——— U.S. ———, 104 S. Ct. 2218, 2224, (1984).

This Court must take note however, that failing to estop the government when it has breached the law would encourage disobedience of the law by the government as well as private citizens.

It has also been said that the government cannot be estopped under the same conditions as a private party because of the government's responsibility to protect the public interest.[5] "As a general rule, laches or neglect of duty on the part of officers of the Government is no defense to a suit by it to *enforce a public right or protect a public interest.* * * * "*Utah Power and Light Co.* v. *United States,* at 243 U.S. 389, 409 (1917) [emphasis supplied].

In the instant case the public interest required to be protected consisted of both the revenue of the United States and *importers.* The plaintiff here failed to comply with the law and ignored the public interest by not protecting *both* importers *and* the revenue of the United States. The reasons for limiting the application of equitable estoppel against the government certainly cannot justify the

[5] The sovereign's duty to protect the public interest is subsumed within the doctrine of sovereign immunity. However the scope of sovereign immunity and the degree to which it has insulated the government has been narrowed considerably. The doctrine of soverign immunity and its corollary the governmental-proprietary distinction has been criticized and narrowed. See *United States* v. *Georgia Pacific Co.*, 421 F.2d 92, 99, n. 13. *See also Garcia* v. *San Antonio Metropolitan Transit Authority,* 53 U.S.L.W. 4135, 4137–4140 (U.S. Feb. 19, 1985).

plaintiff's failure to act in accordance with the law in a matter of the utmost importance.

It must be acknowledged that the opinion in *Air Sea Brokers* v. *United States,* 66 C.C.P.A. 64, C.A.D. 1222, 596 F.2d 1008 (1979) held that equitable estoppel is not available in cases involving the collection of duties on imports. The conduct complained of in *Air Sea Brokers* however, did not involve the breach of a regulation or a statute. In *Air Sea Brokers,* the alleged misconduct consisted of the filling out of forms by the government which might have allowed a broker to achieve duty free entry without certain documents. This conduct was counterbalanced by an ambiguous stamp on the form and more importantly, actual knowledge by the broker that the Customs Service was not waiving the documentary requirement.

Thus, the government's conduct in *Air Sea Brokers* was milder and more ambiguous than the conduct involved in this case. In the instant case there is no possible ambiguity in what the government did and no ameliorating factors in justifying its dereliction of duty. Here, the conduct of the government directly contravened two basic purposes of the law; the protection of the revenue of the United States and the protection of importers. Also of significance is that in the instant action, the defendants justifiably relied on the government's conformance with the law, while in *Air Sea Brokers,* the broker had actual knowledge of the government's conduct. The opinion in *Air Sea Brokers* does not to sanction *all* possible government misconduct in the area of duty collection, particularly when it displays a blatant disregard for the public interest in a matter of the utmost importance.

Moreover, for the government to be immune from the defense of equitable estoppel it must be acting for the benefit of the public. *See Utah Power and Light* v. *United States, supra.* Thus, in *Federal Crop Insurance* v. *Merrill,* 332 U.S. 380 (1947) a farmer who had planted wheat relying on the advice of an agent of the Federal Crop Insurance Corp. (FCIC) that it was insured under its program could not recover for the loss of his crop, because the regulation of the FCIC precluded coverage for spring wheat which had been reseeded on winter wheat acreage. To permit the farmer to recover in *Federal* would undermine a fundamental public policy.

In the instant case it is affirmative *government conduct* not the representation of a mere government agent that has contravened the government's own regulations as well as the express intent of Congress. Here, it is the government that has acted in opposition to the public interest, by violating its duty to protect both importers and its own revenue. The government has given a higher priority to a display of leniency to a broker, the one party under the facts presented whose role is least identifiable with the public interest. The violation of the government's duty to protect importers as well as the revenue of the United States cannot be sanctioned by this Court.

In *I.N.S.* v. *Miranda,* 459 U.S. 14 (1982) an 18-month delay in considering an immigration application did not amount to affirmative misconduct. In *I.N.S* however, no regulation or statute was violated by the government and there was also justification for the administrative delay.

In *Schweiker* v. *Hansen,* 450 U.S. 785 (1981) incorrect advice given by a field representative of the Social Security Administration did not amount to affirmative misconduct. Most revealingly, the Supreme Court stated in *Schweiker* that "[a]t most, Connelly's [the government's] conduct *did not cause respondent to take action * * * or fail to take action,* * * * that respondent could not correct at any time." (Citations omitted) *Id.* at 789 [emphasis supplied]. Furthermore, the Supreme Court emphasized that the field representative's neglect only violated *the agency's claims manual and not a regulation. See Schweiker* v. *Hansen,* 450 U.S. 785. The contrast with the facts of this case could hardly be more striking, in that here the importer was irreparably injured as a result of an obvious disregard by the government of its own regulations and a statute.

The loss of revenue here is directly attributable to the government's failure to act in accordance with its own regulations and in accordance with a clear Congressional mandate. In this case the plaintiff has not acted in behalf of the public interest and thus has no right to resist the just effect of equitable estoppel.

In conclusion, this Court holds that the government's failure to act in accordance with the law equitably estops it from obtaining the duties in question. The defendants' claims, for equitable recoupment as well as the government's obligation to the surety are not reached in this opinion because this action is resolved on more fundamental grounds.

(Slip Op. 85–33)

SANGAMO CAPACITOR DIVISION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 78–6–00999

Before FORD, *Judge.*

[Judgment for plaintiff.]

(Decided March 15, 1985)

Barnes, Richardson & Colburn (*David O. Elliot* and *Jack D. Mlawski*), for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office (*Saul Davis*), for the defendant.

FORD, *Judge:* This action involves the proper classification of silvered mica plates in four frame sizes which are designated as D–10, D–15, D–19 and D–30. The merchandise was classified under Item

685.80 as Electrical Capacitors, fixed or variable, which provides for a rate of duty of 10% ad valorem.

Plaintiff claims the merchandise is entitled to entry free of duty under the Generalized System of Preferences under A516.94 as articles not specially provided for, of mica or A656.15 as articles of silver.

The statutory provisions and headnotes involved herein provide, so far as is pertinent, as follows:

Tariff Schedules of the United States, General Headnotes and Rules of Interpretation—

> 9. *Definitions.* For the purposes of the schedules, unless the context otherwise requires—
>
> * * * * * * *
>
> (f) the terms "of", "wholly of", "almost wholly of", "in part of" and "containing", when used between the description of an article and a material (e.g., "furniture *of* wood", "woven fabrics, *wholly of* cotton", etc.), have the following meanings:
>
> * * * * * * *
>
> (i) "of" means that the article is wholly or in chief value of the named material;
>
> * * * * * * *
>
> 10. *General Interpretative Rules.* For the purposes of these schedules—
>
> (f) an article is in chief value of a material if such material exceeds in value each other single component material of the article;
>
> * * * * * * *
>
> (h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished;

Classified under—		
685.80	Electrical capacitors, fixed or variable	10% ad val.
Claimed under—		
A516.94	Articles not specially provided for, of mica	Free (under Generalized System of Preferences).
	Articles of precious metal, including rolled precious metal:	

* * * * * * *

A656.15	Of silver, including rolled silver.....	Free (under Generalized System of Preferences).

The record in addition to the official papers, which were received in evidence without being marked, consists of the testimony of three witnesses called on behalf of plaintiff and the receipt into evidence of fifteen exhibits introduced by plaintiff. Defendant called one witness on its behalf and introduced eight exhibits into evidence.

Plaintiff's witness, Mr. Charles L. Rogers, is the Manager of Quality and Reliability Control of mica capacitors for plaintiff. For twenty-nine years prior he held the same position covering the entire plant. Plaintiff manufactures three types of capacitors—mica, aluminum electrolytic and power factor capacitors. The witness is familiar with the silvered mica plates involved herein and the manufacture of them in India. The supplier, J.V. Electronics, was established in accordance with plaintiff's specifications and utilized plaintiff's equipment, supervisory personnel and training in setting up the manufacturing operation.

Exhibits 1 through 4 were identified as the four sizes of mica plates involved in this litigation. According to the witness, the imported merchandise consists of two basic materials, mica and silver. They are produced by placing a raw mica blank into an oven to remove moisture. It is subsequently stored in a low temperature oven to keep it moisture-free. The mica is thereafter stacked for efficient assembly and silver is applied to one side of the mica by a silk-screening process. It is dried and the silk-screening process is repeated over the first pattern.

After importation the imported merchandise is manufactured into dipped wire lead capacitors. The witness identified Exhibit 5 as a chart he had prepared covering the process of manufacture of the capacitors in the United States. The following steps are covered by Exhibit 5:

Step 1. The imported silver mica plate.

Step 2. Illustrates that the silvered mica plate is electrically inspected to determine whether or not there are any fractures or shorts in the mica itself and is then sorted into various thickness ranges.

Step 3. An illustration of the tin lead foil which will be used in a later stage in the process to make contact with the silver. Two foils are actually used in the process but only one illustrated on the chart.

Step 4. Represents plain or clear mica, referred to as a backer, which is used as an insulation material on the top and bottom of the assembly of components in the next step.

Step 5. Illustrates the assembly of the foil, the silvered mica plate, and the insulating mica called the backer.

Step 6. Shows how the multiple sections are put together in the prior step.

Step 7. The assembled section is checked for imperfections by applying voltage to the assembly.

Step 8. A varnish is applied by dipping the entire assembly. The varnish is applied to hold the assembled section together for further processing.

Step 9. The assembled section is placed in an oven to cure the varnish.

Step 10. Illustrates the fully assembled multiple section after oven curing.

Step 11. The assembled section is emersed in a bath to remove any contaminants such as chlorides and sulfides within the section assembly.

Step 12. The multiple sections are sawed into individual sections.

Step 13. Illustrates one of these sections resulting from the sawing of the multiple section.

Step 14. Illustrates the clips and leads that are used in the manufacturing process. There are two clips and two leads for each section.

Step 15. Illustrates how those clips and leads are applied to a section.

Step 16. The clipped section is adjusted and calibrated.

Step 17. The component is then washed again to remove any contaminants.

Step 18. The component is placed in an oven to remove any moisture left within the section.

Step 19. A sealant is applied to the clipped section to improve the moisture resistance of the assembly.

Step 20. The assembled section is oven baked to cure the sealant.

Step 21. An epoxy is applied for the purpose of bonding together any delaminated or fractured pieces of mica which may have occurred during the sawing operation.

Step 22. The product is then placed into an oven to cure the epoxy.

Step 23. The clipped section is encased in epoxy.

Step 24. The clipped assembly is placed in an oven to cure the epoxy.

Step 25. The encased assembly is placed in an oven to stabilized the article.

Step 26. The product is washed.

Step 27. The article is measured for voltage stress, capacitance and dissipation factor.

Step 28. The finished capacitor is marked to indicate the capacitance value or code and the working voltage of the unit. The code system would additionally indicate the size of the capacitor.

Step 29. The mark is cured in an oven.

Step 30. Illustrates the article being packed for shipment to the customer. (R. 20–23.)

With the exception of the packing indicated in Step 30, each of the manufacturing steps is required to produce a commercially saleable mica capacitor which would be in compliance with the EIA (Electronic Industries Association) standards, a copy of which was received in evidence as plaintiff's Exhibit 10. The EIA standards are admittedly the "bible" of the industry. There are other specifications utilized by the military.

Mr. Rogers testified at some length as to the minimal tests required by the EIA standards and related them to the steps set forth in plaintiff's Exhibit 5.

The witness defined a capacitor as an electronic device that is designed to receive, store and release electrical energy as an electric charge. Mr. Rogers was of the opinion that the definition of a capacitor as being a device consisting of two electrodes separated by a dielectric is too general since it would apply to many things that are not capacitors. In a mica capacitor the dielectric material is mica and the electrodes are silver. Plaintiff's Exhibit 11, a 500 OHM T.V. antenna cable, consists of two electrodes separated by a dielectric but is admittedly not a capacitor. Likewise a romex cable used to carry electric housing current also consists of an electrode separated by a dielectric, but admittedly is not a capacitor.

The witnesses for plaintiff, as well as defendant, indicated that the silvered mica plates in their imported condition are never used in the trade as capacitors in an electronic circuit. Mr. Rogers asserted that in its imported condition the silvered mica plates are mere material for use in the manufacture of capacitors. The witness testified that in the manufacturing process in the United States there are twelve materials or parts utilized while only silver and mica are used in the manufacture of the imported merchandise.

Mr. Rogers further testified the imported silvered mica plate is not a capacitor since it has no use or function and would not be recognized in the trade as a capacitor. The capacitance of a capacitor is governed by the quality of the dielectric and the size and number of dielectric distribution and electrodes. In order to obtain the desired capacitance, according to the witness, the plates are stacked in a parallel fashion. The definition of the term capacitor read to the witness from *McGraw-Hill Encyclopedia of Science and Technology* did not describe the imported silvered mica plates since the imported merchandise cannot function as a capacitor without performing the manufacturing operations set forth in Exhibit 5.

On cross-examination the witness testified an unfinished capacitor did not exist until Step 15 or 16 of Exhibit 5. It is not a capacitor, according to the witness, since prior to that point it has no environmental protection, protective sealants, or capacitance rating.

Plaintiff thereafter called Mr. Laird L. Macomber, senior product planner at AT&T Technologies. Mr. Macomber formerly worked at Hewlett-Packard for approximately four and one-half years as a technical publication engineer. For approximately eight years prior to that the witness held positions as an application engineer, first at Mallory Capacity Company and later with Cornell-Dubilier Company, in both instances dealing with capacitors. For approximately six and one-half years the witness was employed by C.T.S. Micro Electronics, a manufacturer of micro-circuits, utilizing capacitors.

Mr. Macomber defined a capacitor as a commercial electronic component used for the purpose of putting capacitance in an electrical circuit. It must have as minimum requirements, a known capacitance, terminals for attachment to a circuit, and be suitably mechanically enclosed in order to perform its function. Capacitance, according to the witness, is an electrical unit which measures the ability of a device to store electrical energy. The mininal requirements for commercial application of a mica capacitor are: (a) a known capacitance, (b) a rated voltage, (c) leads or terminals, (d) a suitable case or enclosure to make it mechanically rugged and sound.

Mr. Macomber testified the silvered mica plates are not capacitors since they lack the essential elements referred to *supra*. It was his opinion that an unfinished capacitor would not exist until Step 16 of plaintiff's Exhibit 5 since it is the first step at which leads for connecting into a circuit are provided and there is some measure of electrical utility present. In addition to the foregoing requirements, Mr. Macomber further indicated that it was necessary to have a tolerance rating for a saleable capacitor.

Plaintiff's witness, Mr. Ray Holliday, is presently employed as division controller of Sangamo Capacitor Division. Prior to this employment, he was the chief financial accountant for plaintiff. His duties included the maintenance of books and records of Sangamo and includes familiarity with the purchase of imported silvered mica plates from India. The witness identified plaintiff's Exhibit 13 as a document depicting the manufacturing costs of mica capacitors at the Sangamo plant in South Carolina. The exhibit includes material and labor and overhead necessary for the manufacture of the mica capacitors. This information is determined on a standard cost system which may vary from the actual cost by no more than eight-tenths of one percent. According to Mr. Holliday the cost of the imported silvered mica plates is 2 percent for D–10, 3.7 percent for D–15, 25.1 percent for D–19, and 52 percent for D–30.

Defendant called Mr. Michael Trubowitsch, marketing manager for AVX Corportation, a leading manufacturer of multilayer ceramic capacitors. This company does not manufacture mica capacitors. Prior to his present employment, the witness was associated with various other manufacturers of capacitors. Those companies manufacture tantalum capacitors, dry electrolyte capacitors, wet

aluminum electrolytic capacitors, ceramic capacitors and various plastic film capacitors. Mr. Trubowitsch's employment did not relate directly to the production of capacitors, and he has never sold mica capacitors.

The witness, upon examining Exhibits 1 through 4, characterizes them as a capacitor array. The witness identified Exhibit G as a capacitor array made of ceramic material by the AVX Corporation. Mr. Trubowitsch testified that articles such as Exhibit G are attached into an electric circuit using various methods. While the witness was of the opinion Exhibits 1 through 4 could be similarly attached, he has never seen them so used, nor was he absolutely certain they would be able to accept soldering.

Mr. Trubowitsch testified that a capacitor, by definition, consists of two electrodes separated by a dielectric. He subsequently conceded the above definition should also include, by design, the introduction of capacitance into an electric circuit and that the basic definition is too encompassing. The witness agreed that the involved multilayer mica capacitors, as depicted by Exhibit 5, are designed by the manufacturer to utilize foil, clips and leads as the method to introduce capacitance to the electronic circuit. The witness further testified that the molded and dipped mica capacitor is designed to be encapsulated and have leads which are recognized requirements by the industry of such a component. The witness was unaware of any such article produced commercially without encapsulation and leads. It was the opinion of the witness that a mica capacitor produced from the imported silvered mica plates did not come into being until Step 15 of Exhibit 5. Mr. Trubowitsch knew of no trade standard for a single layered mica plate.

Based upon the record as made and the classification herein, defendant contends the imported silvered mica plates are capacitors or, in the alternative, unfinished capacitors within the meaning of General Interpretative Rule 10(h). The issue thus presented is whether the imported merchandise falls within the above or consists of mere material for the manufacture of capacitors as contended by plaintiff.

In the field of customs jurisprudence, a tariff term is construed in accordance with its common meaning, which is presumed to be the same as its commercial meaning. *Nippon Kogaku (U.S.A.), Inc.* v. *United States,* 69 CCPA 89, 673 F.2d 380 (1982). Congress is presumed to know the language of commerce, and to have framed the statutory provisions according to the general usage and denomination of the trade. *Nylos Trading Company* v. *United States,* 37 CCPA 71, C.A.D. 422 (1949).

The common meaning of a tariff term is not a question of fact but a question of law. *United States* v. *National Carloading Corp., et al.,* 48 CCPA 70, C.A.D. 767 (1961); *American Express Company* v. *United States,* 39 CCPA 8, C.A.D. 456 (1951). The determination of common meaning is a matter of judicial knowledge. The Court may

and does consult dictionaries, lexicographic information, scientific information and other reliable sources of information and as an aid to their knowledge. *United States* v. *Standard Surplus Sales, Inc.*, 69 CCPA 34, 667 F.2d 1011 (1981). The testimony of witnesses may be considered as an aid to the memory of the Court but is not binding and may be accepted or rejected. *Tropical Craft Corp.* v. *United States*, 45 CCPA 59, C.A.D. 673 (1958).

The parties have cited various definitions, including the following:

The *IEEE Standard Dictionary of Electrical and Electronic Terms* (1972):

> *Capacitor (condenser).* A device consisting of two electrodes separated by a dielectric, which may be air, for introducing capacitance into an electric circuit.

McGraw-Hill Encyclopedia of Science and Technology (1982):

> *Capacitor.* A device for introducing capacitance into a circuit. In general, a capacitor consists of two metal plates insulated from each other by a dielectric. * * *
>
> * * * * * * *
>
> *Mica types.* These capacitors use thin rectangular sheets of mica as the dielectric. The dielectric constant of mica is in the range of 6–8. The elctrodes are either thin sheets of metal foil stacked alternatively with the mica sheets, or thin deposits of silver applied directly to the surface of the mica sheets. Mica capacitors are used chiefly in radio-frequency applications. * * *

The classification of ceramic capacitors was before this Court in *Sprague Electric Co., et al.* v. *United States, et al.*, 65 Cust. Ct. 135, C.D. 3972 (1970), wherein the Court quoted the following language from heading 85.18 of the Brussels Nomenclature, which it noted was identical to the language of Item 685.80, *supra*:

> Electrical capacitors (or condensers) consist in principle of two conducting surfaces separated by an insulating material (dielectric), e.g., air, paper, mica, oil, resins, ceramics or glass.
>
> They are used for various purposes in many branches of the electrical industry (e.g.:—to improve the power factor of A.C. circuits; to protect electrical contacts from the effects of arcing; for storing and releasing given quantities of electricity; in oscilating circuits; in frequency filters; and very largely in radio, television and telephone industries).
>
> Their characteristics (shape, size, capacitance, nature of dielectric, etc.) vary according to their intended use. The heading, however, covers all capacitors whatever their intended use (including standard capacitors used in laboratories, specially made within fine limits and designed to remain constant during use).

The definitions *supra* and the testimony established a capacitor to be used in electronic circuits for the purpose of introducing capacitance. The components of a capacitor are two electrodes separated by a dielectric. However, it appears the design and the intended purpose are important. Hence, any article having two electrodes separated by a dielectric does not necessarily make a capacitor. This is apparent by the examples offered as Defendant's Exhibit H and Plaintiff's Exhibits 11 and 12. Defendant's Exhibit H and Plaintiff's Exhibit 11 consists of T.V. antenna wire, and Plaintiff's Exhibit 12 is a piece of Romex house wire cable. These articles have the basic components of the definition and in fact may induce certain capacitance, but they are not designed, intended nor considered a capacitor by the trade.

According to the record the imported silvered mica plates are designed to be used in the manufacture of multilayered dipped capacitors with leads. They are never used for any other purposes and are not sold to the trade in their imported condition. The Electronic Industrial Association Standards, Plaintiff's Exhibit 10, is recognized by the industry. These standards require mica capacitors to meet the specifications established by the association. The merchandise in its condition as imported is not susceptible to most of the tests and, accordingly, would not meet the EIA standards.

In *Sprague, supra,* the Court made the following observation, which is also applicable to the imported merchandise:

> Wire leads are then attached to the silvered disc to enable it to be utilized in electronic circuits. A resin is then applied to the body of the capacitor. Prior to the addition of the leads, the ceramic discs or silver ceramic discs are not electrical articles.

In view of the foregoing, it has been established to the satisfaction of the Court that the imported silvered mica plates are neither designed nor capable in their condition as imported to be utilized in electrical circuits. It is also apparent that said merchandise is neither designed nor capable of introducing a known capacitance into an electric circuit. Accordingly, the Court finds the imported silvered mica plates are not capacitors.

The question as to whether they are unfinished capacitors is also answered in the negative for the reasons hereinafter set forth. The leading case, *Daisy-Heddon, Div., Victor Comptometer Corp.* v. *United States,* 66 CCPA 97, C.A.D. 1228, 600 F.2d 299 (1979) made the following observation and set forth five factors to be considered in determining whether an article is substantially complete and, therefore, unfinished:

> There are several factors which may come into play in the determination of whether an article is substantially complete. In a case, such as this, where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the following factors can

be relevant: (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article. This list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation. The outcome of each case will always depend on the particular merchandise involved.

Plaintiff's Exhibit 5, which sets forth the additional steps and materials added to the imported silvered mica plates to make a commercially acceptable capacitor, clearly establishes the subject merchandise does not to fall within the unfinished category provided for in Rule 10(h), *supra*. It has been established that twenty-nine additional steps, plus packing, are utilized and twelve materials or parts are added. In addition Exhibit 13 establishes the cost of the imported merchandise for the finished capacitors, which is 2 percent, 3.7 percent, 25.1 percent and 52.0 percent for the D–10, D–15, D–19 and D–30, respectively. Each of the steps set forth on Plaintiff's Exhibit 5 are necessary for the completion of an article which will meet the industry standard as set forth in Plaintiff's Exhibit 10.

Defendant's reliance upon *General Electric Co.* v. *United States*, 2 CIT 84, 525 F. Supp. 1244 (1981), aff'd 69 CCPA 106, 681 F.2d 785 (1982) is misplaced. The omission of the power cord, transformer and internal connective wiring and loudspeakers is not analgous to the omission of the leads and the additional required steps set forth in Plaintiff's Exhibit 5. The added fabrication in the case at bar relates directly to the functioning of the capacitor, while in the *General Electric* case the added prefabricated components related to the stereo system as a whole and not the receiver per se.

The imported silvered mica plates are, therefore, not unfinished capacitors within Rule 10(h). However, for plaintiff to be entitled to receive duty-free treatment under the Generalized System of Preferences, as set forth in General Headnote 3(c)(ii), the cost of processing performed in the beneficiary developing country is required to be not less than 35 percent of the appraised value. The Secretary of the Treasury was authorized to promulgate regulations effectuating the headnote.

In the case at bar plaintiff filed Form A upon entry which indicates that not less than 35 percent of the cost of processing were incurred in India. 19 C.F.R. 10.173(a)(4) permits customs officials to request further information as they deem necessary. Customs did not request such additional information, hence the information

contained on Form A remains uncontradicted. In *House of Ideas, Inc.* v. *United States*, 2 CIT 68 (1981), the Court held that Form A, submitted upon entry and certified by an independent governmental authority of the exporting country designated by Customs for that purpose, is deemed to be presumptively correct.

Since plaintiff claims the imported merchandise to be dutiable in chief value of silver or mica, depending upon its content, it has the burden of proof to establish the component material in chief value.

In order to determine the component material in chief value, the case law holds the value of each component must be ascertained at a time when they have reached such condition that nothing remains to be done to them except to be combined. *Seeberger* v. *Hardy*, 150 U.S. 420, 14 S.Ct. 170, 37 L.Ed. 1129 (1893); *United States* v. *Jovita Perez, et al.*, 44 CCPA 35, C.A.D. 633 (1957). The affidavit of Mr. M. K. Pillai, the Director and Secretary of J. V. Electronics Ltd., the supplier, Plaintiff's Exhibit 14, specifically sets forth the values from the books and records of the company at the time of manufacture when nothing remains to be done but the joinder of the components. Based upon this evidence which stands uncontroverted, it is established that the silvered mica plates in frame sizes D–10 and D–19 are in chief value of mica and frame sizes D–15 and D–30 are in chief value of silver.

In view of the foregoing the imported silvered mica plates are not capacitors nor unfinished capacitors. The D–10 and D–19 frame sizes are articles of mica subject to classification under Item A516.94 and frame sizes D–15 and D–30 are articles of silver under Item A656.15

Judgment will be issued accordingly.

(Slip Op. 85–34)

UNITED STATES, PLAINTIFF *v.* SAUL MIZRAHIE AND SAFECO INSURANCE CO. OF AMERICA, DEFENDANTS, SAFECO INSURANCE CO. OF AMERICA, DEFENDANT-THIRD-PARTY PLAINTIFF *v.* REBECCA MIZRAHIE, THIRD-PARTY DEFENDANT

Consol. Court No. 83–8–01189

Before: RE, *Chief Judge.*

MEMORANDUM OPINION

Defendant-third-party plaintiff, a surety seeking indemnification on an import bond, pursuant to 28 U.S.C. § 1583, applies for a writ of attachment against real property of third-party defendant located in California.

Held: The Court of International Trade has subject matter jurisdiction over third-party claims in action to recover on a bond pursuant to 28 U.S.C. 1583, as well as personal jurisdiction over these

parties. The Court also possesses the necessary equitable power to effect the provisional relief requested in this case, pursuant to 28 U.S.C. § 1583 and 28 U.S.C. § 2643 (c)(1). In accordance with Rule 64 of the Rules of this Court, this Court is empowered to grant provisional remedies to secure a judgment, such as attachment, in conformity with appropriate state law. Since the surety established the conditions necessary for an *ex parte* attachment under the law of California, the state in which the property is located, the order for a writ of attachment was granted.

[Right to attach order granted.]

(Decided March 19, 1985)

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin*) for the plaintiff.

Marks & Brooklier (Anthony P. Brooklier) for the defendant, and third-party defendant.

Hart & Hume (Mark S. Gamell) for the defendant-third-party plaintiff.

RE, *Chief Judge:* The question presented in this case is whether a surety seeking indemnification on an import bond, pursuant to 28 U.S.C. § 1583 (1982), may obtain a writ of attachment against an indemnitor's real property located in California. This Court holds that it is empowered to issue a writ of attachment affecting property located in California, and that the requirements of California law, for the issuance of the writ, have been met.

On March 6, 1985, defendant-third-party plaintiff, Safeco Insurance Company of America (Safeco), sought an *ex parte* right to attach order, and the issuance of a writ of attachment affecting real property, located in the State of California, owned by third-party defendant, Rebecca Mizrahie. Upon due consideration and examination of Safeco's application and supporting affidavits, on March 8, 1985, this Court ordered that the Clerk of the Court issue a writ of attachment.

This is the first case before this Court in which a private party has requested, and has been granted a writ of attachment prior to judgment.

FACTS

On August 18, 1983, September 29, 1983, and July 17, 1984, pursuant to 28 U.S.C. § 1582 (2) (1982), plaintiff, the United States, instituted three separate actions in this Court, U.S. C.I.T. Nos. 83-8-1189, 83-9-1385, and 84-7-990, against Saul Mizrahie and Safeco. On February 19, 1985, the Court issued an order consolidating all three actions into one action bearing consolidated court number 83-8-1189. In each of these actions, the United States seeks to recover liquidated damage penalties against Saul Mizrahie for his alleged violations of 19 C.F.R. § 12.80, which governs the importation of vehicles that do not conform to federal motor vehicle safety

standards, and against Saul Mizrahie and Safeco for breach of three Immediate Delivery and Consumption Bonds (bonds or consumption bonds).[1] The relief sought by the United States is the recovery of $43,811 in liquidated damage penalties, plus pre-judgment interest from the date of each liquidated damage assessment made by the Customs Service.

The imported merchandise consisted of various models of Mercedes Benz automobiles (vehicles) which were entered, on separate occasions, at the port of Long Beach, California. On each occasion, the vehicles, which did not conform to federal motor vehicle safety standards, were conditionally released to Saul Mizrahie. As a condition of each vehicle's release, Mizrahie was obligated, within ninety days, either to provide a satisfactory statement that the vehicles had been altered to conform to federal safety standards, or to redeliver the non-conforming vehicles. As security for any liquidated damage penalties that might be incurred for failure to perform his obligations, Mizrahie executed, jointly with Safeco as surety, the three consumption bonds that form the basis of Safeco's cross and third-party claims.

Alleging that Saul Mizrahie neither provided satisfactory statements of conformity, nor redelivered the vehicles within ninety days after their respective releases, the Customs Service, on June 2, 1978 and March 30, 1979, assessed liquidated damages against him. Saul Mizrahie then petitioned for, and was denied, mitigation of the assessment of liquidated damage penalties. Plaintiff, the United States, subsequently brought the three actions against Saul Mizrahie and Safeco.

In each of the three actions Safeco interposed an answer, and cross-claimed for judgment against Saul Mizrahie based upon the common law right of a surety to indemnification from its principal, and upon a written General Agreement of Indemnity, dated June 26, 1977 (Indemnity Agreement). The Indemnity Agreement was executed by Saul and Rebecca Mizrahie, in favor of Safeco.

Pursuant to Rule 4(d) of the Rules of this Court, Rebecca Mizrahie was personally served with a third-party summons and complaint on December 13, 1983 and November 9, 1984. To date, Saul Mizrahie, who has appeared and answered in these actions, has not served an answer to the cross-claims of Safeco as required by Rule 7(a) of the Rules of this Court. Rebecca Mizrahie has neither appeared, nor served an answer to Safeco's third-party complaint.

On January 31, 1985, the United States moved for summary judgment against Saul Mizrahie and Safeco.[2] On March 6, 1985,

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[1] Pursuant to 19 C.F.R. § 12.80(e), vehicles that do not conform to federal motor vehicle safety standards may not be released unless a surety bond, equal to the value of the vehicle plus estimated duties and taxes, is posted with the Customs Service. The release of the bond is conditioned upon obtaining a statement from the National Highway Traffic Safety Administration, stating that the vehicle has been brought into conformity with all applicable safety standards. *Id.* If the statement is not obtained and the vehicle not redelivered, liquidated damages in the amount of the bond shall be assessed. *Id. See also* 19 C.F.R. § 113.14.

[2] Since defendants Saul Mizrahie and Safeco requested and were granted an extension of time until March 21, 1985, to respond to the United States' motions for summary judgment, the motions for summary judgment are still pending.

Safeco moved *ex parte*, pursuant to Rule 64, for a "right to attach order" and for the issuance of a writ of attachment, contending that, since Saul and Rebecca Mizrahie are in default as to Safeco's claims against them, they are liable to Safeco for any judgment which may be obtained by the United States against Safeco.

The following questions were presented by Safeco's application for the issuance of a writ of attachment:

1. Whether this Court is empowered to order the issuance of an *ex parte* writ of attachment affecting property located in the State of California; and
2. Whether Safeco has satisfied the requirements, under California law, for the issuance of an *ex parte* writ of attachment.

For the reasons that follow, the court has granted Safeco's *ex parte* application for a right to attach order and a writ of attachment.

JURISDICTION

With the enactment of the Customs Courts Act of 1980, Pub. L. No. 96–417, 94 Stat. 1727 (1980), Congress expanded and clarified the jurisdiction of this Court to create "a comprehensive system for judicial review of civil actions arising out of import transactions and federal statutes affecting international trade." Statement of President Carter, 16 Weekly Comp. of Pres. Doc. 2183 (Oct. 11, 1980). *See* H.R. Rep. No. 96–1235, 96th Cong., 2d Sess. 18–20 (1980).

Pursuant to 28 U.S.C. § 1582, this Court was granted exclusive subject-matter jurisdiction over civil penalty actions under sections 592, 704(i)(2), and 734(i)(2) of the Tariff Act of 1930, and over actions "to recover upon a bond relating to the importation of merchandise" required by federal law or Treasury regulations. 28 U.S.C. § 1582. In addition, pursuant to 28 U.S.C. § 1583, the Court of International Trade has exclusive jurisdiction over any counterclaim, cross-claim, or third-party action of any party to recover on a bond related to the importation of merchandise that is the subject of the civil action. *Id.* § 1583.

An examination of the legislative history of the Customs Courts Act of 1980 sheds considerable light on these sections. As originally introduced, the predecessor bill to the 1980 Act, H.R. 6394, did not provide for cross-claims and third-party actions arising out of suits by the United States to recover on a bond. *See* H.R. 6394, 96 Cong., 2d Sess., 126 Cong. Rec. 1530 (1980). Under that proposal, an aggrieved surety who wished to recover for breach of contract against the principal would have been required to bring a separate action in a federal district court or in a state court. After hearings on the bill, it became clear that it would be preferable to allow all claims arising out of an underlying import transaction to be adjudicated in one action before the Court of International Trade. *See* H.R. Rep. No. 96–1235, 96th Cong., 2d Sess. 37–38 (1980). Accordingly,

the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, amended the proposed section 1583 to authorize the assertion of any counterclaim, cross-claim or third-party action of any party in an action to recover on the bond. *Id.* at 38. Section 1583, therefore, as enacted, manifests clearly the intent of the Congress to have the rights of all of the parties adjudicated fully and completely in one action before the Court of International Trade. *See id.* at 50–51.

Since Safeco's cross-claim and third-party action seek indemnification on a bond required by Treasury regulations, this action falls squarely within section 1583. The defendant, Saul Mizrahie, and third-party defendant, Rebecca Mizrahie, were both duly served with process in this action. Thus, it is clear that this Court possesses subject-matter and personal jurisdiction over the parties.

The Court's Equitable Powers

Of equal significance to the Court's expanded jurisdiction in the 1980 Act was Congress' explicit conferral upon the Court of International Trade of "all the powers in law and equity of, or as conferred by statute upon, a district court of the United States." 28 U.S.C. § 1585 (1982). Thus, the Act granted this Court "remedial powers co-extensive with those of a federal district court." H.R. Rep. No. 96–1235, 96th Cong., 2nd Sess. 61 (1980). *See also Budd Co. Ry. Div.* v. *United States,* 1 CIT 175, 176–78 (1981). With certain limited exceptions, not relevant here, Congress authorized the Court "to order *any form of relief that is appropriate in a civil action,* including, *but not limited to,* declaratory judgments, orders of remand, injunctions, and writes of mandamus and prohibition." 28 U.S.C. § 2643(c) (emphasis added). *See also* 28 U.S.C. § 1651 (1982); *Alberta Gas Chem., Inc.* v. *United States,* 85 Cust. Ct. 122, 125, C.R.D. 80–13, 496 F. Supp. 1332, 1334–36 (1980). The legislative history of the Customs Courts Act of 1980 leaves no doubt that 28 U.S.C. § 2643(c)(1) "is a general grant of authority for the Court of International Trade to order any form of relief that it deems appropriate under the circumstances." H.R. Rep. No. 96–1235, 96th Cong., 2nd Sess. 61 (1980).

Decisions of this Court and the Court of Appeals for the Federal Circuit teach that, in cases in which jurisdiction has been established, this Court has the power to grant preliminary injunctive relief in order to preserve the status quo until a final judgment is rendered. *See, e.g., Zenith Radio Corp.* v. *United States,* 710 F.2d 806, 809–10 (1983); *S.J. Stile Assoc. Ltd.* v. *Snyder,* 68 C.C.P.A. 27, 29–30, C.A.D. 1261, 646 F.2d 522, 525 (1981); *Ceramica Regiomontana, S.A.,* v. *United States,* 7 CIT ———, 590 F.Supp. 1260, 1263 (1984); *American Air Parcel Forwarding Co.* v. *United States* 1 CIT 293, 298–300, 515 F.Supp. 47, 52–53 (1981); *Associated Dry Goods Corp.* v. *United States,* 1 CIT 306, 309, 515 F.Supp. 775, 778 (1981).

Federal Rule of Civil Procedure 64, which governs the district courts, provides that provisional remedies, including attachment, "for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy was sought * * * ." Fed.R.Civ.P. 64.

The language of Rule 64 of the Rules of this Court, which implements this Court's statutory authority under 28 U.S.C. § 1585 and § 2643(c)(1), is substantially similar to Fed.R.Civ.P. 64. Rule 64 of this Court provides that provisional remedies, such as attachment, are available in accordance with "appropriate state law existing at the time the remedy is sought." Although the Federal Rules of Civil Procedure expressly apply only to the federal district courts, it has been held that, where substantially similar, they provide guidance in the interpretation of the rules of this Court. *See United States* v. *Porter,* 68 C.C.P.A. 15, 20, C.A.D. 1259, 645 F.2d 52, 57 (1981). Thus, in support of this Court's jurisdiction and to effectuate its judgment, the Rules of this Court permit the attachment of property, prior to judgment, in accordance with, and to the extent permitted by state law. In considering the application for attachment, since the property sought to be attached is real property located in the State of California, the applicable law is the law of California.

It should be emphasized that the issuance of a writ of attachment in this case in no way threatens the jurisdiction of any state. The territorial jurisdiction of this Court is national in scope. Furthermore, the equitable power of the court to attach property for the purpose of securing a judgment is coextensive with the equitable power of a district court. *See* H.R. Rep. No. 96–1235, 96th Cong., 2nd Sess. 61 (1980); U.S.C.I.T. Rule 64; Fed.R.Civ.P.64. Moreover, a writ of attachment will issue only in conformance with state law. U.S.C.I.T. Rule 64; Fed.R.Civ.P.64.

It is well to note that, although the "offices" of this Court are located in the State of New York, trials and other proceedings may be held at "any place within the jurisdiction of the United States." 28 U.S.C. § 256 (1982). *See* U.S.C.I.T. Rule 77(c)(2). *See generally* Re, *Litigation Before the Court of International Trade,* 19 U.S.C.A. vii, x (Supp. 1984). It is also noteworthy that the effective reach of the court's process extends throughout the entire United States. *See* U.S.C.I.T. Rule 4. Consequently, if deemed necessary and appropriate, the proceedings in this action could be conducted or transferred to a United States courthouse located in California. Indeed, if the defendants, upon being served with the writ in this case, were to move to vacate the attachment, if it were deemed necessary, the chief judge of the Court could order that these proceedings be held in California. *See Shannon Luminous Materials Co.* v. *United States,* 69 Cust. Ct. 317, 318–20, C.R.D. 72–21 (1972).

The comprehensive statutory scheme which established this Court and its jurisdiction, clearly requires that the Court of International Trade resolve disputes within its subject matter jurisdiction regardless of the state in which the dispute arose. Since the Court, like its predecessor, the United States Customs Court, is a court of national jurisdiction, it is axiomatic that it may exercise its jurisdiction in cases properly before it in any of the fifty states. *See* 28 U.S.C. § 256 (1982); S. Rep. No. 96–466, 96 Cong., 1st Sess. 3, 15 (1979); *Customs Court: Hearings on S.2624 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary,* 91st Cong., 1st Sess. 1 (1969) (statement of Senator Hruska).

In order to effectuate the statutory responsibilities of the Court's nationwide subject-matter jurisdiction, Congress enacted sections 569(a), 751(f), and 1963A of Title 28 to enable this Court to be physically present "at any place within the jurisdiction of the United States." Section 569(a) provides that the United States marshal for each district, except for the Southern and Eastern Districts of New York, is the marshal of the Court of International Trade when the Court is holding sessions in that district. 28 U.S.C. § 569(a) (Supp. 1984). Section 751(f) provides that the clerk of any district in which the Court of International Trade is sitting, except the Southern and Eastern Districts of New York, shall upon the request of the chief judge of this Court, and with the approval of the district court, act as the clerk of this Court "for all purposes relating to the civil action then pending before such court." 28 U.S.C. § 751(f) (1982). Pursuant to section 1963A, a final judgment entered by the Court of International Trade may be registered in any judicial district, and shall have the same effect and be enforced in the same manner as a judgment of the district court. 28 U.S.C. § 1963A (1982).

Since this Court's jurisdiction under 28 U.S.C. § 1583 is exclusive, a surety seeking indemnification from the principal for breach of the terms of a consumption bond must seek redress before the Court of International Trade. If the preliminary relief sought by Safeco were not available in this Court, it is likely that it would not be available in any other, since all other courts are barred from entertaining Safeco's claims. *Id.* In providing for exclusive jurisdiction over cross-claims and third-party actions on import bonds, the Congress intended to foster judicial economy, and afford the parties an effective and complete remedy. *See, e.g.,* H.R. Rep. No. 96–1235, 96th Cong., 2d Sess. 61 (1980). Therefore, it is clear that, with the passage of the 1980 Act, Congress provided this Court with the full legal and equitable power to grant complete relief to all parties to an action properly before it, regardless of where the action arose.

Consequently, this Court has both the exclusive jurisdiction and the necessary equitable power to issue a writ of attachment, prior

to judgment, in an action to recover on a consumption bond. *See* 28 U.S.C. §§ 1583; 1585. This equitable power is implemented by U.S.C.I.T. Rule 64, which authorizes the issuance of a writ of attachment in accordance with state law. The inability or refusal to issue a writ could render any judgment obtained by Safeco in this Court ineffective and a nullity. Such an anomalous result would frustrate Congress' firmly expressed intent to afford all parties to an import transaction access to a tribunal that could grant an appropriate remedy and do complete justice.

The case of *United States* v. *Gold Mountain Coffee, Ltd.*, 8 CIT ———, slip op. 84–117 (Oct. 16, 1984) is not authority contrary to the court's holding in this case. In that case, the plaintiff, the United States, has seized certain coffee beans imported and stored in California, pursuant to a warrant of arrest under 28 U.S.C. § 2461(b) (1982), purportedly in furtherance of 18 U.S.C. § 545 (1982) and 19 U.S.C. § 1592 (1982). On the defendant's motion, the court quashed the warrant, and held that the court lacked subject-matter jurisdiction under 18 U.S.C. § 545, and that the judicially ordered forfeiture of the merchandise was not warranted under 19 U.S.C. § 1592. *Gold Mountain Coffee, Ltd., supra,* slip op. at 7, 10. Section 1592(c)(5), the court concluded, contains specific statutory standards for the forfeiture of property by the government under section 1592, which were not satisfied in that case. Nevertheless, the court specifically noted the availability of other pre-judgment remedies under Rule 64. *Id.* at ——— n.11, slip op. at 11 n.11. In contrast, Safeco's claims, in this application, pursuant to section 1583, are based upon contract, for which traditional legal and equitable remedies are available.

The Issuance of a Writ of Attachment Under California Law

As discussed previously, since the property sought to be attached in this action is real property located in the State of California, California law governs Safeco's right to an attachment. U.S.C.I.T. Rule 64.

Under California law, the provisional remedy of prejudgment attachment is statutory, and is designed to ensure the collectability of a judgment by limiting the defendant's control of his assets until plaintiff obtains judgment. Pursuant to Section 483.010 of the California Code of Civil Procedure (C.C.P.), a writ of attachment may be issued:

> [O]nly in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

C.C.P. § 483.010(a). Under the prior version of C.C.P. § 483.010, it has been held that an attachment could properly issue in an action brought by a surety against its indemnitors. *See General Insurance, Co. of America* v. *Howard Hampton, Inc.*, 8 Cal. Rptr. 353 (Cal. App. 1960).

Clearly, since Safeco's claim against the Mizrahies is based upon a contract of indemnity, seeks money only, and is in an amount that exceeds five hundred dollars, Safeco's application meets the requirements of C.C.P. § 483.010(a).

Under the present California statute, no right to attach order or writ of attachment may be obtained *ex parte* "unless it appears from the facts shown by affidavit that great or irreparable injury would result * * * if issuance of the order were delayed until the matter could be heard on notice." C.C.P. § 485.010(a). This statutory language was the result of the California Supreme Court's decision in *Randone* v. *Appellate Dept. of Sup. Ct. of Sacramento County*, 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), *cert. denied*, 407 U.S. 924 (1972), in which California's prior attachment statute was declared unconstitutional.

In *Randone*, a collection agency, without notice, attached the checking account of the petitioners. The collection agency was the assignee of a law firm, to which the petitioners owed $490 for services rendered, plus $130 in accumulated interest. The California Supreme Court found that the statute, permitting attachment of any property of a debtor, including necessities of life, without prior hearing or notice, violated the constitutional guarantee of due process. The court held that notice could be dispensed with only in "extraordinary circumstances," otherwise the statute would be unconstitutional on its face. *Id.* at 563, 488 P.2d at 32, 96 Cal. at 728.

The *Randone* court relied on the United States Supreme Court's decision in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), which voided a Wisconsin prejudgment wage garnishment statute, and held that the statute, since it sanctioned the taking of property without prior notice, violated procedural due process. The California Supreme Court found that *Sniadach* "returned the entire domain of prejudgement remedies to the long standing procedural due process principle which dictates that, *except in extraordinary circumstances*, an individual may not be deprived of his life, libertey or property without notice and hearing." 5 Cal. 3d at 547, 488 P.2d at 1, 96 Cal. Rptr. at 715 (emphasis added). Thus, since the California statute in *Randone* was not sufficiently limited, it was held to be invalid.

The *Randone* court also noted that *Sniadach* referred to only three circumstances that would be sufficient to satisfy the requirement of "extraordinary circumstances." These circumstances were stated to be (1) summary procedures permitting specialized governmental officers to react to financial difficulties at a particular bank by seizing operational control of its assets; (2) summary seizure of

misbranded drugs; and (3) prejudgment attachment of property of a non-resident by a resident creditor. 5 Cal. 3d at 553–54, 488 P.2d at 24–25, 96 Cal. Rptr. 720–21; *see Ewing* v. *Mytinger and Casselberry, Inc.*, 339 U.S. 594 (1950); *Fahey* v. *Maloney*, 332 U.S. 245 (1947); *Coffin Bros.* v. *Bennett*, 277 U.S. 29 (1928); *Ownbey* v. *Morgan*, 256 U.S. 94 (1921). The *Randone* court further states that a constitutionally valid statute could be drafted "to permit attachment before notice in exceptional cases where, for example, the creditor can additionally demonstrate . . . that an actual risk has arisen that assets will be concealed or that the debtor will abscond." *Id.* at 563; 488 P.2d at 31, 96 Cal. Rptr. at 727 (citations omitted); *see also People* v. *Allstate Leasing Corp.* 24 Cal. App. 3d 973 101 Cal. Rptr. 470 (1972).

As a result, and in response to the *Randone* decision, section 485.010(b) now provides that the requirement of showing great or irreparable injury is satisfied only if it is established that:

> (1) Under the circumstances of the case, it may be inferred that there is a danger that the property sought to be attached would be concealed, substantially impaired in value, or otherwise made unavailable to levy if issuance of the order were delayed until the matter could be heard on notice.

C.C.P. §485.010(b)(1).

In *Johnson* v. *Alexander*, 63 Cal. App. 806, 134 Cal. Rptr. 101 (1976), the Second District Court of Appeal reviewed C.C.P. § 585.5, the predecessor of section 485.010, and found that the grounds on which an original pre-notice attachment had been based remained valid, and affirmed a lower court decision denying dissolution of the attachment. The court also noted that there remained "a substantial danger that the defendants would transfer, other than in the ordinary course of business, remove or conceal the property sought to be attached." *Id.* at 814, 134 Cal. Rep. at 106.

Hence, a court must examine the application for a right to attach order and supporting affidavit to determine whether it complies with the following requirements of section 485.220(a):

> [A] right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking * * *, if it finds all of the following:
>
> (1) The claim upon which the attachment is based is one upon which an attachment may be issued.
>
> (2) The plaintiff has established the probable validity of the claim upon which the attachment is based.
>
> (3) The attachment is not sought for a purpose other than the recovery upon the claim upon which the attachment is based.
>
> (4) The affidavit accompanying the application shows that the property sought to be attached, or the portion thereof to be specified in the writ, is not exempt from attachment.

> (5) The plaintiff will suffer great or irreparable injury (within the meaning of Section 485.010) if issuance of the order is delayed until the matter can be heard on notice.

Id.

In this case, Safeco moved *ex parte* for a right to attach order, and alleged in its application and supporting papers that there was a danger that the property sought to be attached "would be concealed, impaired in value or made unavailable to levy if issuance of the order were delayed until the matter could be heard on notice."

In support of Safeco's allegation of irreparable injury, the court was furnished with several documents which indicated a potential for "great or irreparable injury" to Safeco. The first document was Saul and Rebecca Mizrahies' statement of financial condition as of July 11, 1977, given to Safeco by the Mizrahies in connection with the issuance of the bonds and indemnity contract at issue. This statement reflects a net worth exceeding three million dollars ($3,000,000), and includes a list of real and other property held by the Mizrahies at that time. Since the dates of the assessments for which the United States brought suit, the Mizrahies have transferred or liquidated their interest in all the property listed in their statement except for the real property located at 6130 Warner Drive, Los Angeles, California. A copy of an Individual Quitclaim Deed from the Los Angeles County Recorder's office reveals that on January 13, 1981, subsequent to the assessment of the liquidated damage penalties underlying this action, Saul Mizrahie transferred record ownership of that property to his wife, Rebecca. It is alleged by Safeco that Rebecca Mizrahie is still record owner of that property, and that it is apparently the Mizrahies' present residence.

The court was also furnished with a copy of an indictment dated January 23, 1985 in *"U.S.* v. *Saul Mizrahie,"* Criminal Case No. 8500586, currently pending in the United States District Court, Southern District of California. The indictment charges Saul Mizrahie with three counts of concealing merchandise imported contrary to law, in violation of 18 U.S.C. § 545 (1982). The merchandise, which is the basis of the indictment, is unrelated to the subject matter of this action. Safeco also states that Saul Mizrahie has petitoned the district court for permission to proceed *in forma pauperis* in that criminal action, and that he claims to have no assets.

In light of these overwhelming indications of the Mizrahies' severe financial and legal distress, and their failure to answer Safeco's cross and third-party claims, there is a substantial likelihood that Rebecca Mizrahie would transfer last significant remaining asset, the Los Angeles house. A grand jury has found sufficient evidence to indict Saul Mizrahie for knowingly and willfully concealing merchandise that he knew was imported contrary to law. All other assets of the Mizrahies have disappeared. If title to the Los Angeles house is transferred, Safeco will suffer "irreparable injury" in that it will be unable to collect a judgment against the

Mizrahies. In view of the foregoing, it is the determination of the Court that the statutory requirements of section 485.010, as well as the constitutional requirement of "extraordinary circumstances" for issuance of the writ, have been met. *See Johnson* v. *Alexander,* 63 Cal. App. 806 814, 134 Cal. Rptr. 101, 106 (1976); *Randone* v. *Appellate Dept. of Sup. Ct. of Sacramento,* 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), *cert. denied,* 407 U.S. 924 (1972).

As for the validity of Safeco's claim, the Mizrahies have defaulted on Safeco's cross and third-party claims. Assuming, therefore, that the government succeeds on the merits, it appears likely that Safeco will be found liable to the government on the consumption bonds. Under California law a written agreement of indemnity is fully enforceable, and may entitle the indemnitor to costs and attorney's fees incurred in prosecuting the indemnification claim. *See, e.g., DeWitt* v. *Western Pacific R.R. Co.,* 719 F.2d 1448, 1453 (9th Cir. 1983); *Schackman* v. *Universal Pictures Co.,* 255 Cal. App. 2d 857, 863, 63 Cal. Rptr. 607 (1967). Since the indemnity agreement in this case was executed in California, and is governed by California law, the Court in issuing the writ determined that Safeco's probability of success on the merits was considerable.

It should be noted that the effect of the writ issued against the Mizrahies' Los Angeles property is only to prevent its transfer prior to judgment, and does not affect their right to possession. In addition, in accordance with the provisions of C.C.P. §§ 489.210 and 489.230, Safeco posted an undertaking in the amount of one hundred thousand dollars ($100,000) to secure payment of any judgment the Mizrahies might recover for the wrongful attachment of their property by Safeco.

Thus, the Court determined that the requirements mandated by California law for the issuance of an *ex parte* writ of attachment were met by Safeco's application in that:

1. Safeco's claim upon which the attachment is based is for money only and more than five hundred dollars;
2. Safeco established the probable validity of its claim;
3. Safeco's attachment was not sought for a purpose other than securing Safeco's recovery on its claims;
4. Safeco's affidavit showed that the property sought to be attached was not exempt from attachment under C.C.P. § 487.020, and is subject to attachment under C.C.P. § 487.101; and
5. Safeco showed that it would have suffered great or irreparable injury, within the meaning of C.C.P. § 485.010, if issuance of the order was delayed until the matter could have been heard on notice.

In view of the foregoing, the Court on March 8, 1985, granted Safeco's application for an *ex parte* right to attach order, and directed the Clerk of this Court to issue a writ of attachment affecting the property located at 6130 Warner Drive, Los Angeles, California.

Decisions of
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The following abstracts of decisions of the Un
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Abstracts

DEPARTMENT OF THE TREASURY, *March 8, 1985.*

e United States Court of International Trade at New York are
of officers of the customs and others concerned. Although the
to print in full, the summary herein given will be of assistance
tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

ABSTRACTED PRO

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and r
P85/53	Ford, J. March 7, 1985	Alaron, Inc.	82-3-00297	Item 678.50 4.7% with exception of clock portion which was classified unde item 720.02 at 35¢ each
P85/54	Ford, J. March 7, 1985	Sperry Corp.	81-10-01426	Item 682.20 25%
P85/55	Ford, J. March 7, 1985	Sperry Corp.	82-7-01006	Item 682.20 25%
P85/56	Ford, J. March 7, 1985	Sperry Rand Corp.	84-2-00251	Item 682.20 25%
P85/57	Ford, J. March 7, 1985	Sperry Rand Corp.	84-3-00310	Item 682.20 25%
P85/58	Ford, J. March 7, 1985	Victaulic Co. of America	81-1-00029	Item 610.74 11%
P85/59	Ford, J. March 8, 1985	Formosa Plastics Group (USA) Inc.	80-1-00052	Item 355.81 6%
P85/60	Ford, J. March 8, 1985	Victaulic Co. of America	82-8-01112	Item 610.74 11%

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.50 with ion of portion was ed under 20.02 at ch	Item 678.50 4.8% or 4.7%	U.S. v. Texas Instrument, Inc., 673 F.2d 1375 (1982)	San Francisco Rhapsody Brand Model No. R506/B AM/FM MPX Radio Receivers with 8-Track Player and L.E.D. Digital Alarm Clock; an entirety
.20	Item 682.25 12.5%	Agreed statement of facts	New York Motor or motor assemblies
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.74	Item 610.70 8%	Agreed statement of facts	Newark, NJ Various types of castings of malleable iron
.81	Item A771.42 Free of duty pursuant to General Headnote 3(c)	U.S. v. Elbe Products Corp., 655 F.2d 1107 (1981)	Charleston Vinyl sponge leather
.74	Item 610.70 8%	Agreed statement of facts	Newark, NJ Various types of castings of malleable iron

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